IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

CRL.A.No. 2125 of 2006()

AGAINST THE JUDGEMENT/ORDER IN CRLP.81/2005 Dated 30/08/2006
CC.659/2003 of JUDL.MAGISTRATE OF FIRST CLASS, ETTUMANUR

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APPELLANT: COMPLAINANT:

M.T. ISNOOVER, D.647764,
MUKALEL HOUSE, KANAKKARY, KOTTAYAM.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS: ACCUSED & STATE:

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1. P.J. THOMAS, PALAMMOTTIL,
KANAKKARY, KOTTAYAM.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.C.C.PADMAKUMAR
BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 2125 of 2006

Dated this the 20th February, 2007.

J U D G M E N T

The complaint filed under Section 138 of the Negotiable Instruments Act, in short 'the Act', against the first respondent, before the Judicial First Class Magistrate Court, Ettumanoor, was dismissed, on the ground that the complainant was absent on the appointed date. There was no representation from the counsel as well. Therefore, the accused was acquitted. The same is under challenge through this appeal, on obtaining leave of this Court.

2. I have heard the arguments advanced by the learned counsel, Sri.M.J.Thomas, appearing for the appellant, complainant, and the learned counsel, Sri.C.C.Padma Kumar, appearing for the first respondent, accused.

3. According to the appellant, when the matter came up before the court below on 18.10.2004, the case was adjourned to 4.12.2004. But the complainant inadvertently heard the date as 9.12.2004. Meanwhile, a proof affidavit was filed before the court

below. However, when the complainant appeared on 9.12.2004, it is learnt that the complaint was dismissed on 4.12.2004 itself, because of the absence of the complainant.

4. After hearing both sides, and considering the materials on record, I deem it necessary to give an opportunity to both sides to raise their contentions. Therefore, I set aside the impugned order, dated 4.12.2004, and restore C.C.No.659/2003, to the file of the Judicial First Class Magistrate Court, Ettumanoor.

5. The parties shall appear before the court below on 16.3.2007.

6. The learned Magistrate shall dispose of the same, at the earliest, and in any case, within two months from the date of appearance of the parties.

Criminal Appeal is allowed accordingly.

J.M. JAMES,
JUDGE

nj.